

STANLEY J. PIRTLE

IBLA 76-593

Decided September 7, 1976

Appeal from the decision of the New Mexico State Office, Bureau of Land Management, denying petition for reinstatement of oil and gas leases NM 20130 and NM 20130-A.

Affirmed.

1. Oil and Gas Leases: Reinstatement

No petition for reinstatement of an oil and gas lease terminated by operation of law may be entertained if the full amount of rental due was not paid within 20 days after the anniversary date of the lease.

2. Oil and Gas Leases: Reinstatement

Where an oil and gas lease has terminated pursuant to 30 U.S.C. § 188(b) (1970), a petition for reinstatement is properly denied which fails to provide any explanation to show that the lessee's failure to tender the full amount of the rental when due was either justified or not attributable to the lessee's lack of diligence.

3. Federal Officers and Employees: Generally -- Oil and Gas Leases: Generally

Bureau of Land Management personnel have no affirmative duty to take extraordinary measures to preserve an oil and gas lease or to save the lessee from the possible consequences of his own conduct of his affairs concerning such lease.

4. Federal Officers and Employees: Generally -- Oil and Gas Leases:
Reinstatement -- Oil and Gas Leases: Rentals

Where, by prearrangement, as part of a business negotiation, a third party assumes responsibility for the payment of the annual rentals for two oil and gas leases which subsequently terminate by operation of law when the rental check is dishonored by the drawee bank, the leases will not be reinstated on the strength of the lessee's naked assertion that the uncollectability of the check was deliberately contrived as part of a scheme to deprive him of the lease so that the third party could be granted the leases unlawfully by a federal employee.

APPEARANCES: Truman P. Kirk, Esq., Cisco, Texas, for appellant.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Stanley J. Pirtle appeals from the decision of the New Mexico State Office, BLM, denying his petition for the reinstatement of two oil and gas leases which terminated by operation of law when the check of a business associate, one R. V. Roberts, which had been tendered in payment of the advance rental was returned by the drawee bank marked "NOT SUFFICIENT FUNDS" after the March 1, 1976, anniversary date of the leases. 30 U.S.C. § 188 (1970); 43 CFR 3108.

Upon the return of the check, the New Mexico State Office notified Pirtle of the fact the leases had terminated, explained that the check had been dishonored, and advised him how he might petition for reinstatement. The notice was dated March 11 and was received by Pirtle on March 15, 1976.

The statute, supra, provides in pertinent part "upon failure of a lessee to pay rental on or before the anniversary date of the lease * * * the lease shall terminate automatically by operation of law * * *." The statute also makes provision for the reinstatement of leases so terminated, under certain circumstances, where "such rental was paid on or tendered within twenty days thereafter, and it is shown to the satisfaction of the Secretary of the Interior that such failure was either justifiable or not due to lack of reasonable diligence on the part of the lessee * * *."

On March 23, 1976, 8 days after receiving the notice of termination, appellant wrote a short letter to the New Mexico State Office referring to the notice and stating, "This is, of course, the first I knew of the returned check signed by Mr. R. V. Roberts covering the rentals for the above leases." He enclosed his own check in payment of the delinquent rentals, and referred to "the right of reinstatement." He offered no explanation to establish that he had exercised due diligence or to justify the non-payment of the rental when due. This letter and the enclosed check were received in the New Mexico State Office on March 25.

That Office treated the letter as a petition for reinstatement and issued a decision denying reinstatement on the ground that "* * * it has been found that the lessee has not satisfactorily complied with the requirements for reinstatement as provided by the Act of May 12, 1970, and the regulations to implement it contained under Title 43 CFR 3108.2-1(c)." The decision did not specify in what particulars the petition was deemed deficient, which is regrettable, but there were, in fact, two very compelling reasons which mandated that the petition be denied.

[1] First, the rental due was not paid or tendered within 20 days after the anniversary date, as required by both the statute and the regulation, supra. Petitions for reinstatement may not be considered unless the payment has been made or tendered within that 20-day period. Here, the appellant did not even transmit the payment until the 23rd day, and it was not received until 25 days after it was due. This Board has repeatedly held that the Department is precluded by law from giving favorable treatment to a reinstatement petition under such circumstances. Merilyn K. Buxton, 24 IBLA 269 (1976); Joseph Francis, 22 IBLA 277 (1975); Aaron V. Barson, 18 IBLA 156 (1974); Amoco Production Co., 16 IBLA 215 (1974); Texas Eastern Transmission Corp., 14 IBLA 361 (1974); W. R. Murfin, 13 IBLA 97 (1973). The Department simply has no authority to grant reinstatement in such cases. A check which the bank has refused to honor is not a tender or payment of the rental pursuant to the statute, unless the result of bank error. Duncan Miller, 16 IBLA 379 (1974).

[2] Second, the petition made no offer of any explanation to show that the late payment was justifiable or not due to a lack of diligence on the part of the lessee, although even if such a showing had been made it would not have been cognizable because of the failure to tender the payment within the statutory period.

Thus, the petition was wholly deficient and it was properly rejected by the New Mexico State Office.

Ordinarily, this would conclude our consideration of the matter. However, in his statement of reasons for appeal, Pirtle has strongly implied that an employee of this Department was involved in a scheme to deprive appellant of these leases so that the leases could be awarded to Roberts. Under the circumstances, we are morally obligated to review this case in full detail in order to ascertain what further action, if any, is indicated.

In essence, appellant alleges that he, Marion B. Edmonds and the aforementioned R. B. Roberts had been negotiating in regards to work proposed in connection with the subject lease[s]. In the course of these negotiations Roberts agreed to make the rental payment, and in furtherance of this commitment Roberts sent his personal check for the correct amount to the New Mexico State Office prior to the due date.

As previously noted, the check was deposited by the State Office and was subsequently returned by the drawee bank which had twice stamped the face of the check with the words "NOT SUFFICIENT FUNDS."

Appellant alleges that in fact there were funds available for payment of the check and that the check was good at the time it was received, but that Roberts had called his bank and stopped payment. Appellant has submitted no evidence whatever to support this allegation, and a photo-copy of the face of the check which is contained in the case record evinces no indication that the check was dishonored because of a stop-payment order. Even if it were established that this was what happened, however, that fact alone would not justify the failure to make timely payment, as will be explained, infra.

Appellant further alleges that Roberts is reported to have boasted to "other persons," not identified, that he had deliberately arranged that his check would not clear as part of a scheme to deprive appellant of these leases, so that he could obtain them subsequently. To this end, it is alleged, Roberts communicated with an employee of the Bureau of Land Management ^{1/} who assured Roberts "that he would be able to get the lease[s] once it was taken away from Stanley J. Pirtle, your appellant * * *." Appellant says that, "This information came to Mr. Pirtle and to Mr. Marion B. Edwards as a rumor, but they believe it to be true * * *."

^{1/} We have deleted the name of the employee since, in light of our findings, it would serve no purpose to identify him.

Appellant also acknowledges that it may not be possible to prove the alleged conversation and agreement between Roberts and the Bureau employee, but states:

However, it is known that Mr. Roberts did in fact contact [the BLM employee] prior to the expiration of the lease and advise him that he was having some misunderstandings with his partners, and that he wanted to let the lease terminate.

Appellant infers that the employee in question was under a duty to report to the appellant any conversations he may have had with Roberts concerning these leases, regardless of the substance of any such conversations, and he draws some rather sinister implications from the fact that the employee did not report to him any conversations with Roberts, saying:

Appellant, Stanley J. Pirtle, would further state to the Appeals Board that at this time, it is his sincere belief that fraudulent action by Mr. R. V. Roberts resulted in the decision, first to terminate the lease against your appellant, Stanley J. Pirtle; and second, to deny his petition for reinstatement.

Appellant, Stanley J. Pirtle as soon as he had notice of the deficiency, submitted his check for the rental to the New Mexico office. Appellant, Stanley J. Pirtle, would further state to the Appeals Board that to allow this decision to stand and to terminate the lease against appellant, Stanley J. Pirtle, amounts to fraud, on the part of the individual, R. V. Roberts with probable notice of such fraud by the Department.

* * * Appellant feels that if any discussion or agreements were made between Mr. Roberts and [the BLM employee], that appellant, Stanley J. Pirtle should have been advised, prior to the time that the lease expired.

With his statement of reasons for appeal appellant has submitted a number of exhibits consisting of items of correspondence and documents concerning appellant's and Edmunds' negotiations with Roberts. One of these exhibits is a letter from Edmunds to the appellant which states, in part, as follows:

Following our breakoff of discussion, Roberts told me today, he called his bank and intentionally had them return the check, so we would lose the lease.

He stated he had called [the BLM employee] in Santa Fe and told him what he had done. I do not know for sure what he might have told [the employee] if indeed anything.

Our review of the administrative case records of the subject leases reveals no irregularity of any kind in the handling of this matter. Robert's check was deposited for collection, as it should have been. When it was returned marked "Not Sufficient Funds" by the drawee bank after the anniversary date, the employee in question promptly notified the appellant of that fact, informed him of the resultant termination of the leases by operation of law, and advised him of his right to petition for reinstatement of the leases, citing the pertinent provisions of statute and regulations. This notice specifically apprised him of the need to tender the payment within 20 days after the anniversary date and to make the requisite showing with respect to justification and/or due diligence. Accordingly, we find that the employee handled the matter correctly and routinely, and in such a manner that the appellant was fully enabled to make his rental payment within the 20-day period and submit a proper petition for reinstatement. It is in nowise the employee's fault that appellant failed to do so.

Moreover, appellant has offered nothing to show any complicity on the part of the employee to cause the termination of the leases or to illegally award the leases to Roberts, 2/ nor has it even been shown that the employee was informed in advance that Robert's check would be returned by the bank. Appellant's stated suspicion that this is the case is based entirely on hearsay, or the rumor of hearsay, and on the inferences which appellant has drawn on the basis of his own speculations and conjectures.

[3] It is not the duty of BLM personnel to police the relationships between oil and gas lessees and their associates. Even if Roberts had informed the employee that it had been decided to let the lease terminate and that in furtherance of that decision he had arranged to have the check returned, the employee would have no warrant to poll the interested parties to ascertain whether the action was known to them and had their agreement. Bureau personnel have no affirmative duty to take extraordinary measures to save an oil and gas lease from the possible consequences of the lessee's negligence. Richard V. Bowman, 19 IBLA 261 (1967). Of course, if the information that the check would

2/ Leases which terminate because of non-payment of the annual rental must be publicly posted for the simultaneous filing of offers, and are awarded on the basis of a public drawing. 43 CFR 3112. Because of the constant public scrutiny of oil and gas lease records and the internal case-audit procedures conducted by the Government it is most unlikely that an employee would even consider such a proposal.

be dishonored came to the employee after the anniversary date, there would be nothing which could be done about it, except what was done.

[4] When the parties agreed that Roberts would assume the responsibility for paying the lease rentals the appellant did not shed his own responsibility to see that this was done. Roberts, in effect, became appellant's agent for this purpose. This Board has held that where the lessee, or the lessee's agent, has entrusted the timely payment of the lease rental to another, the negligent failure of the agent and/or subagent to accomplish payment will not excuse or justify the lessee. See Lucille Lipphardt, 24 IBLA 81 (1976), where the lessee entrusted the rental payment to a friend, and Charles C. Sturdevant, 20 IBLA 280 (1975), where the duty to pay was assigned to an employee.

Regardless of whether the return of the check was occasioned by Robert's pre-arrangement with the bank or whether it occurred inadvertently, Roberts, in his capacity as payor, was acting for appellant, and appellant must bear the consequences.

There being no evidence of impropriety on the part of the named BLM employee, we will not recommend that appellant's allegations against him be given further attention by the Department.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing
Administrative Judge

I concur:

Newton Frishberg
Chief Administrative Judge

ADMINISTRATIVE JUDGE THOMPSON CONCURRING:

The only issue that this Board needs to resolve in regard to this appeal is whether there is a basis for reinstating appellant's oil and gas lease. I agree we have no authority to do so in view of appellant's failure to submit the rental payment within the 20-day statutory period. Regardless of whether the check submitted by Mr. Roberts was returned from the bank because of a lack of insufficient funds or because Mr. Roberts stopped payment, the filing of the check with BLM cannot constitute a payment of the rental when it was due. Mr. Roberts was in the role of appellant's agent in making the payment and whether his agent was negligent or engaged in fraudulent conduct against appellant cannot obviate the effect of nonpayment of the rent. Even if we were to take all of appellant's assertions as true, they would provide no basis for reinstating his lease. His relief, if any, must be sought in another forum against the alleged wrongdoer(s).

With regard to appellant's charges against a BLM employee, it is sufficient to note that appellant is not foreclosed by this decision from requesting that this Department's Office of Audit and Investigation conduct an investigation to ascertain whether any disciplinary or other action should be taken against an employee for improper or unlawful conduct. We see no basis for recommending such an investigation and, as indicated above, reinstatement of appellant's lease is not permissible in any event.

Joan B. Thompson
Administrative Judge

